IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT ARUSHA
REVISION APPLICATION NO. 25 OF 2020

HANIL JIANGSU JV LIMITED.....APPLICANT

VERSUS

LUCY PAULO IWAWUTU ..... RESPONDENT

JUDGMENT

20/12/2021 & 21/3/2022

GWAE, J

The applicant, Hanjangsu Joint Venture Limited and respondent, Lucy Paul Iwawutu were an employer and an employee respectively. The parties' employment relationship began since 1st day of July 2015 till on the 11th day of September 2019 when the respondent's employment was terminated.

It was the version of the applicant that the respondent being as a flag lady did commit a gross misconduct by operating roller machine on the 20th July 2018 without permit from her supervisor nor did she have any valid license as a result caused a total damage of the machine and the respondent's injuries and that, eventually, there was mutual termination agreement between the parties dated 12th September 2018

whereby the respondent was paid Tshs. 929,166/= whereas the respondent's version was that she did not operate the said machine as the same was being operated by one Sam and that she was involved in the accident due to the fact that she went close or nearby the roller machine with a view of collecting a gadget. She went on contending that she did not voluntarily sign the said mutual termination agreement.

Having heard the parties, the Commission finally concluded that the applicant unfairly terminated the respondent in terms of both reason and procedures in that, there was no direct evidence establishing that, the respondent operated the roller machine and that the one who purported to represent the respondent during disciplinary hearing was not known by the respondent. Hence, denial of right to be heard.

Feeling aggrieved by the arbitral award, the applicant has brought this application. In the chamber summons, the applicant is praying for the following orders;

1. That, the court be pleased to grant this application for the reasons that the arbitrator failed to consider the strong evidence of the applicant and that he decided the dispute basing on his own assumptions and intuitions
2. That, this court be pleased to call for the records and examine the proceedings of the Commission via CMA/ARS/562/2018

and thereafter be pleased to revise and quash the award dated 10th March 2020

3. Any other orders/relief that the court may deem just to grant

This application did not go unopposed as the respondent filed her counter affidavit by stating that the impugned arbitral award was procured in accordance with the law governing the labour disputes.

Before this court, the parties' representatives namely; Mr. Aggrey Kamazima (advocate) and Mr. Herode (personal representative) for the applicant and respondent respectively sought and obtained leave to argue this application by way of written submission.

Mr. Kamazima, argued that the learned arbitrator omitted to look at the sanctity of exhibit D4 produced by the applicant and that the arbitrator failed to determine first issue on whether there was valid agreement to terminate the employment. According to him, the omission occasioned miscarriage of justice. He embraced his argument by citing the case of **Sheikh Ahmed Said v. The Registered Trustee of Manyema Masjid** (2005) TLR 61.

The counsel for the applicant also submitted that it was wrong for the arbitrator for his failure to consider the mutual agreement of the parties to terminate the contract of employment since Rule 3 (2) and Rule

4 (1) of the Employment and Labour Relations (Code of Good Practice) Rules of 2007 recognizing mutual agreement to terminate contract of employment. He added that the parties are bound by the terms of their agreement which they freely entered into and that courts cannot interfere unless such agreement has been made under duress or inducement. To butter his submission, Mr. Kamazima cited a case of **Miriam Maro v. Bank of Tanzania**, Civil Appeal No. 22 of 2017 (unreported-CAT) and case of **Yara Tanzania Limited v. Catherine Assenga,** Revision No. 88 of 2020, Labour Court at DSM.

Responding to the submission advanced by the applicant's counsel, Mr. Herode argued that, the applicant failed to prove the alleged misconduct in the Commission as was rightly held by the Commission and that the contract of employment should not be terminated upon the employers' will or whims. The respondent's personal representative further stated that there was no mutual agreement since the respondent was terminated prior to the said agreement. He then urged this court to make a reference to the decision of this court in the case of **TRC vs. Mwinjuma Said Sekiwa**, Revision No. 239 of 2014 (unreported).

In his rejoinder, Mr. Kamazima reiterated his submission in chief and emphasis made in the precedents that he cited earlier adding that, justice

would not have been dispensed with if the 1st issue was determined by the Commission.

In determining this application, the following issues will guide me, whether, the 1st issue framed during arbitration was addressed by the Commission and whether there was proof of misconduct by the applicant.

Whether, the 1st issue framed during arbitration was addressed by the Commission.

It is clear from the proceedings and the impugned award that, the 1st issue was on whether the alleged parties' mutual agreement on the termination of employment was framed however the applicant is found complaining that the same was not determined by the learned arbitrator. Examining the evidence on record, it is true that the 1st issue was not determined at all, that was wrong on the part of the arbitrator. Since the 1st issue was vital in reaching just and fair decision.

I am alive of the well-known principle that, our courts are bound to make findings on each and every issue framed as correctly submitted by the learned counsel for the applicant unless the court's determination of one issue answers another or more issues and, if so, such judgment should indicate to that effect since cases are decided on the framed issues. The Court of Appeal of Tanzania when faced the similar situation

in **Sheikh Ahmed Said v. The Registered Trustee of Manyema Masjid** (2005) TLR 61 at page 67 authoritatively held;

> "We need not be delayed in this point. It is an elementary principle of pleading that each issue framed should be definitely resolved one way or the other. This aspect was touched on by the court in James B. Kumonywa v. Mara Cooperative Union (1984) Ltd and the Attorney General (1). The fact that the two issues covered the same aspect, does not, with respect, detract from the legal requirement under the rules of procedure".

(See also **Blay vs. Polland & Morris** (1930) 1 KB 311 at page 634 and **Scan Tan Tours Ltd v. The Registered Trustees of the Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012 (unreported-CAT).

In this instant matter, the learned arbitrator is plainly seen to have omitted to resolve the 1st issue framed, the omission which, in my view, is fatal since the issue of the alleged parties' mutual agreement to terminate the employment was framed and it was therefore mandatory for the Commission to determine the same before jumping into, whether there was valid reason and if answered in affirmative, whether termination procedures were followed or not (2nd issue) taking into account that the 1st issue is a distinct issue from other issues.

It is a cardinal rule of procedure that an Arbitrator should comply with the guidelines specified under Part III of the Labour Institutions

(Mediation and Arbitration Guidelines) GN no. 67 of 2007, Rules 18 to 26 thereof and to arrive at a proper record of proceedings despite the fact that under Rule 19 of GN. No. 67 of 2007 empowers the Arbitrator to determine how the proceedings should be conducted but it my considered opinion that, such powers do not allow him to overlook or skip the vital stages in the arbitration process (See a decision of this court **(Mashaka,** J as she then was now JA) in **Rajabu Malenda v. Security Group (T) Ltd,** Lab. Division at DSM, Revision No. 188 of 2015, 27/11/15 reported in Labour Court Digest of 2015.

Having answered the first ground as herein above for the sought revision in affirmative, I am therefore not required to proceed ascertaining if the learned arbitrator was justified in holding that, the respondent was unfairly terminated both in substantive and procedural aspect. The 1st issue is therefore capable of disposing of the application and making necessary directions and above all by determining the remaining ground for the revision shall obviously preempt re-procurement of an award by the Commission.

Basing on the above findings, the applicant's application is granted to the extent that the Hon. Arbitrator erred in law by not making a finding on the 1st issue. The impugned arbitral award is thus quashed and set

aside. The Commission is directed to expeditiously re-procure its award by considering all the framed issues. No order as costs of this application is made. It is so ordered

Dated at Arusha this 21st March, 2022

M. R. GWAE
JUDGE

Order: Parties to appear before hon. Arbitrator on **6**/4/2022 for At about 10: 00 hrs necessary action

M. R. GWAE
JUDGE
21/3/2022